

BILL NO. S-74-05-24

SPECIAL ORDINANCE NO. S-80-74

AN ORDINANCE approving an Agreement for  
construction of a sanitary sewer extension  
on Kinnerk Road

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT  
WAYNE, INDIANA:

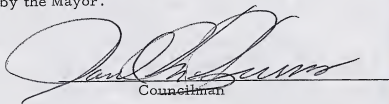
SECTION 1. The Agreement dated May 2, 1974 between ALFRED J.  
and HANNAH F. ZACHER, and the City of Fort Wayne, by and through its Mayor  
and the Board of Public Works, for the construction of a sanitary sewer as  
follows:

Commencing at an existing manhole in Kinnerk Road 4 feet West  
of the East right of way line and 225<sup>±</sup> feet North of the Northwest  
property corner of lot #32 in Allison's Sub. Add. thence, Southerly  
along the East right of way of Kinnerk Road, a distance of 310<sup>±</sup> feet,  
terminating at a proposed manhole

for a total cost to be paid by the Developer, all as more particularly set forth in  
said Agreement, which is on file in the Office of the Board of Public Works, and is  
by reference incorporated herein and made a part hereof, is hereby in all things  
ratified, confirmed and approved.

SECTION 2. That the Developer, and any owner or owners of land,  
their successors in title and assigns, which is now or may hereafter be located  
outside the corporate limits of the City of Fort Wayne, Indiana, who taps into said  
sewer covered in said Agreement, or any extension thereof, shall be deemed to  
therebywaive his, her, their or its rights to remonstrate against or otherwise ob-  
ject to, interfere with, or oppose any pending or future annexation to said City  
of Fort Wayne, Indiana, of such land or territory in which said land is located.

SECTION 3. This Ordinance shall be in full force and effect from and  
after its passage and approval by the Mayor.

  
Councilman

APPROVED AS TO FORM  
AND LEGALITY, \_\_\_\_\_

CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Stier, and duly adopted, read the second time by title and referred to the Committee on City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on the \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, at \_\_\_\_\_ o'clock P.M., E.S.T.

Date: 5-14-74

Charles W. Westerman  
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Stier, and duly adopted, placed on its passage.

Passed (Lost) by the following vote:

	AYES <u>8</u>	NAYS <u>1</u>	ABSTAINED _____	ABSENT _____ to-wit:
BURNS	<u>X</u>	_____	_____	_____
HINGA	<u>X</u>	_____	_____	_____
KRAUS	<u>X</u>	_____	_____	_____
MOSES	<u>X</u>	<u>X</u>	_____	_____
NUCKOLS	<u>X</u>	_____	_____	_____
SCHMIDT, D.	<u>X</u>	_____	_____	_____
SCHMIDT, V.	<u>X</u>	_____	_____	_____
STIER	<u>X</u>	_____	_____	_____
TALARICO	<u>X</u>	_____	_____	_____

DATE: 5-28-74

Charles W. Westerman  
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. 2-80-74 on the 28th day of May, 1974.

Charles W. Westerman  
CITY CLERK

Samuel J. Talarico  
PRESIDENT OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 29th day of May, 1974, at the hour of 11:30 o'clock A. M., E.S.T.

Charles W. Westerman  
CITY CLERK

Approved and signed by me this 29th day of May, 1974, at the hour of 3:30 o'clock P. M., E.S.T.

Jim A. Leland  
MAYOR

Bill No. S-74-05-24

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance  
approving an Agreement for construction of a sanitary sewer extension on  
Kinnerk Road

have had said Ordinance under consideration and beg leave to report back to the Common  
Council that said Ordinance 06 PASS.

Paul M. Burns - Chairman

James S. Stier - Vice-Chairman

Vivian G. Schmidt

Donald J. Schmidt

Eugene Kraus, Jr.

DATE 5-28-74 Charles W. Westen CITY CLERK

20-515-3  
5/9/74

A G R E E M E N T  
F O R  
S E W E R   E X T E N S I O N

THIS AGREEMENT, made in triplicate, this 2 day of May, 1974, by and between Alfred J. and Hannah F. Zacher, husband and wife, hereinafter referred to as "Developer", and IndKid, Inc., an Indiana Corporation, hereinafter referred to as "Owner", and the CITY OF FORT WAYNE, INDIANA, an Indiana Municipal Corporation, hereinafter referred to as "City",

W I T N E S S E T H:

WHEREAS, the Developer desires to construct a sanitary sewer:

Commencing at an existing manhole in Kinnerk Road 4 feet West of the East right of way line and 225± feet North of the Northwest property corner of lot #32 in Allison's Sub. Add. thence, Southerly along the East right of way of Kinnerk Road, a distance of 310± feet, terminating at a proposed manhole.

Said sewer to be 10" in diameter,

in accordance with plans, specifications and profiles heretofore submitted to the City and now on file in the office of the Chief Engineer of the Sewer Utilities of the City, and known as sanitary sewers to serve Kinnerk Road - South of Lower Huntington Road - Lot #32 in Allison's Sub. Add. which plans, specifications, profiles are by reference incorporated herein and made a part hereof, which sewer will serve only the land in which the Developer has an interest.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. CONSTRUCTION OF SEWER

The Developer shall cause said sewer to be constructed and located in accordance with said plans, specifications, and profiles, all approved by the City, under private contract after requisite City approval. All work and materials shall be subject to inspection by City and the right of City to halt construction if there shall be non-compliance therewith. Said sewer shall not be deemed permanently connected into the sewer system of City until final acceptance by City. Upon completion, said sewer shall become the property of City and City shall accept sewage therefrom, subject to such sewage service charges as may now or hereafter be regularly established by City, and all further maintenance thereafter shall be borne by City.

2. COST OF CONSTRUCTION

The Developer agrees to pay the entire cost and expense of construction of said sewer, in cash, including City engineering and inspection fees, and to hold the City harmless from any liability for claims connected therewith.

3. AREA OF DEVELOPER AND OWNER

Said sewer, when accepted by the City, will serve the following described real estate: A part of the Northwest Quarter of Section 35, Township 30 North, Range 12 East, Allen County, Indiana, more fully described as follows:

Lot #31 and Lot #32 in Allison's Suburban Addition as recorded in Plat Book #18, page 9 in the Office of the Recorder of Allen County, Indiana,

EXCEPT part of said Lot #32 in Allison's Suburban Addition, more particularly described as follows:

Beginning at the northwest corner of said Lot #32; thence East along the North line of said Lot #32 a distance of 218.5 feet to the Northeast corner of said Lot #32; thence by deflection right of 158 degr. 39 min. a distance of 175.0 feet; thence by deflection right of 70 degr. 17 min. a distance of 84.5 feet to the point of beginning.

As the Developer will pay for the cost of construction of said sewer as it pertains to the above described area, no charge or assessment is made by this Agreement against the above described real estate for the construction of said sewer by the present or future owners of said real estate except only as to such standard tap-in, inspection fees and monthly sewage treatment charges as are customarily charged by the City for connections to City sewer mains and treatment of sewage therefrom.

An area connection charge of \$442.73 per acre must be paid to City at the time of connection. This area connection charge is in addition to the local charge as set forth above, and represents the oversizing cost expended by City for sewer line pertaining to St. Mary's Interceptor Resolution No. 214 , all as recorded in Instrument No. 71-05984.

4. BOND

This contract is subject to Developer furnishing a satisfactory Guaranty Bond for the value of the sewer, which shall guarantee said sewer against defects for a period of one (1) year from the date of final acceptance of said sewer by the City.

5. LIMITATION ON USE

Said sewer shall be constructed for disposal of sanitary sewage only and neither the parties hereto, their successors, or assigns, or any future owner of any land serviced by said sewer, shall at any time discharge or permit to be discharged or to flow into said sanitary sewer, any water runoff caused by natural precipitation or anything other than sanitary sewage or contaminated waste.

6. COUNCILMANIC APPROVAL

It is understood and agreed that this contract is in all respects subject to approval by the Common Council of City, by duly adopted Ordinance, and if such Ordinance is not adopted within a period of ninety (90) days after execution thereof, this contract shall be null and void and of no further force and effect.

7. WAIVER OF RIGHT TO REMONSTRATE AGAINST ANNEXATION

The Owner, for himself, his successors in title and assigns, waives and releases any and all rights which it may now or hereafter have to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of any territory now or hereafter owned by him, as described in Article 3 herein, or hereafter served by said sewer or any extension thereof.

In further consideration and to induce City to execute and ratify this contract, said Owner, for himself, his successors and assigns, agrees by this contract to vest in City the permanent right at its discretion to annex to the City of Fort Wayne at any future time by duly authorized ordinance the said real estate described in Article 3 herein.

Owner further agrees that any deeds, contracts, or other instruments of conveyance made by the Owner, its successors or assigns transferring or conveying any interest or title in and to any of the real estate described in Article 3 herein, shall contain the waiver and release provisions contained in this article, which provisions shall run with the land and the acceptance of the delivery of any such instrument from the Owner, his successors and assigns by any grantee, vendee, or contract purchaser, shall be made subject to the terms of this Agreement and shall constitute an acceptance of the foregoing provisions by said grantee, vendee, or contract purchaser and their successors in title.

The Owner further agrees to record an executed copy of this contract in the Allen County Recorder's Office within ten (10) days of its adoption and approval by the Common Council of City as hereinafter provided.

Any owner or owners of land which is now, or hereafter located outside the corporate limits of City who connect into the sewer constructed hereunder, shall be deemed to thereby waive his, her, their or its right to remonstrate against or otherwise object to, interfere with or oppose any pending or future annexation by City of such land or of the territory in which it is located or of the area served by said sewer.

IN WITNESS WHEREOF, the parties have subscribed to this agreement the day and year first above written.

DEVELOPER: Alfred J. and Hannah F. Zacher

By: Alfred J. Zacher Husband  
Hannah F. Zacher Wife

OWNER: Ind-Kid, Inc.

By: R. L. Bending, Pres.

CITY OF FORT WAYNE, INDIANA

BY: Ivan A. Lebamoff  
Ivan A. Lebamoff, Mayor

BOARD OF PUBLIC WORKS

By: R. D. Branner  
By: Ronald L. Branner  
By: \_\_\_\_\_

ATTEST:

Anna L. Smith  
Clerk

MAY 2 1974

Approved as to form and legality:

[Signature]  
Associate City Attorney

This instrument prepared by Philip R. Roller, P.E.

STATE OF INDIANA, COUNTY OF ALLEN, SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Alfred J. and Hannah F. Zacher, Husband and Wife, Developer, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal, this 5th day of April, 1974.

Ellen M. Patton  
Notary Public

My Commission Expires:

November 19, 1977

STATE OF INDIANA, COUNTY OF HOWARD, SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared R. L. Bundy, President, Indi-Kid, Inc.,

Owner, who acknowledged the execution of the foregoing agreement for sewer extension, as and for his voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal, this 5th day of April, 1974.

Rachel D. Gonzalez  
Notary Public

My Commission Expires:

11-25-74

STATE OF INDIANA, COUNTY OF ALLEN, SS:

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Ivan A. Lebamoff, Mayor; Jerry D. Boswell, Chairman of the Board of Public Works; Ronald L. Bonar and ~~William G. Williams~~, Members of the Board of Public Works; and Edna I. Smith, Clerk of the Board of Public Works, who acknowledged the execution of the foregoing agreement for sewer extension, as and for their voluntary act and deed for the uses and purposes therein contained.

Anne J. Doherty  
Notary Public

My Commission Expires:

March 6, 1976



POWER OF ATTORNEY AND CERTIFICATE OF AUTHORITY OF ATTORNEY(S)-IN-FACT

KNOW ALL MEN BY THESE PRESENTS, THAT THE AETNA CASUALTY AND SURETY COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and does by these presents make, constitute and appoint **Arthur C. Frericks, Donald T. Belbutowski, Leonard Shirley, Gerald A. Dahle or Josephine Stackhouse - -**

of **Fort Wayne, Indiana**, its true and lawful Attorneys-in-Fact, with full power and authority hereby conferred to sign, execute and acknowledge, at any place within the United States, or, if the following line be filled in, within the area there designated, the following instrument (s):  
by his sole signature and act, and all bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any and all consents incident thereto **not exceeding the sum of TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS -**

and to bind THE AETNA CASUALTY AND SURETY COMPANY, thereby as fully and to the same extent as if the same were signed by the duly authorized officers of THE AETNA CASUALTY AND SURETY COMPANY, and all the acts of said Attorneys-in-Fact, pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following provisions of the By-Laws of the Company which provisions are now in full force and effect and are the only applicable provisions of said By-Laws:

ARTICLE IV—Section 8. The President, any Vice President, or any Secretary may from time to time appoint Resident Vice Presidents, Resident Assistant Secretaries, Attorneys-in-Fact, and Agents to act for and on behalf of the Company and may give any such appointee such authority as his certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors may at any time remove any such appointee and revoke the power and authority given him.

ARTICLE IV—Section 10. Any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President or a Vice President or by a Resident Vice President, pursuant to the power prescribed in the certificate of authority of such Resident Vice President, and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary or by a Resident Assistant Secretary, pursuant to the power prescribed in the certificate of authority of such Resident Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact pursuant to the power prescribed in his or their certificate or certificates of authority.

This Power of Attorney and Certificate of Authority is signed and sealed by facsimile under and by authority of the following Resolution voted by the Board of Directors of THE AETNA CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 22nd day of November, 1968.

VOTED: That the signature of William O. Bailey, Senior Vice President, or of Andrew H. Anderson, Vice President, or of D. N. Gage, Assistant Vice President, or of Neil H. Pfanstiel, Secretary, or of Benjamin I. Radding, Secretary, or of Curtis K. Shaw, Secretary, and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, THE AETNA CASUALTY AND SURETY COMPANY has caused this instrument to be signed by its  
**Secretary**, and its corporate seal to be hereto affixed this **29th** day of **June**, 19 **71**

THE AETNA CASUALTY AND SURETY COMPANY

State of Connecticut }  
County of Hartford } ss. Hartford



By Benjamin I. Radding  
Secretary

On this **29th** day of **June**, 19 **71**, before me personally came **BENJAMIN I. RADDING** of **Secretary** of **THE AETNA CASUALTY AND SURETY COMPANY**, the corporation described in and which executed the above instrument; that he bears the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; and that he executed the said instrument on behalf of the corporation by authority of his office under the By-Laws thereof.



Mary J. Kingston  
My commission expires March 31, 19 **75** Notary Public

CERTIFICATE

I, the undersigned, **Secretary** of THE AETNA CASUALTY AND SURETY COMPANY, a stock corporation of the State of Connecticut, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney and Certificate of Authority remains in full force and has not been revoked; and furthermore, that Article IV—Sections 8 and 10, of the By-Laws of the Company, and the Resolution of the Board of Directors, as set forth in the Certificate of Authority, are now in force.

Signed and Sealed at the Home Office of the Company, in the City of Hartford, State of Connecticut. Dated this **2** day of **APRIL**, 19 **74**



Benjamin I. Radding  
Secretary



DIGEST SHEETTITLE OF ORDINANCE: Agreement with Alfred J. & Hannah F. Zacher (Ind-Kid, Inc.)DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: This ordinance provides for construction of a sanitary sewer extension on Kinnerk Road. Cost of sewer shall be paid by developer and, after inspection, shall be accepted into City sewer system with sewage revenue coming to the Utility.

There shall be an area connection charge due the City at time of connection as set forth in St. Mary's Interceptor Sewer Resolution 214. Said charge covers City's cost for oversizing.

EFFECT OF PASSAGE: Sewer service provided to new customers with revenues to Sewer Utility.

EFFECT OF NON-PASSAGE: Failure to provide sewer service as requested.

MONEY INVOLVED (Direct Costs, Expenditures, Savings): Future revenue to City Utility with reimbursement of expenditures previously assumed by City for oversizing St. Mary's Interceptor Main.

ASSIGNED TO COMMITTEE (J.N.): City Utility